

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
PAGING COALITION and)	CC Docket No. 01-346
AMERICAN ASSOCIATION OF)	
PAGING CARRIERS)	
)	
Request for Declaratory Ruling that)	
Termination by Verizon of Type 3A)	
Interconnection Service Would Be Unjust)	
and Unreasonable, in Violation of Section 201)	
of the Communications Act, 47 U.S.C. §201,)	
and Otherwise Unlawful)	
To:		The Commission, <i>en banc</i>

FOURTH SUPPLEMENT TO PETITION FOR DECLARATORY RULING

THE PAGING COALITION¹ and the AMERICAN ASSOCIATION OF PAGING CARRIERS (“AAPC”), by their attorney, respectfully submit their fourth supplement to the Petition for Declaratory Ruling (the “Petition”) in the captioned proceeding, in order to (1) advise the Commission that ALLTEL Corporation, by and through its operating company subsidiary ALLTEL Kentucky, Inc. (collectively “Alltel”), has willfully and unilaterally terminated the equivalent of Verizon’s Type 3A service (which Alltel refers to as “Reverse Toll Billing” or “RTB” service) to paging carriers in Alltel’s exchanges, despite the protests of paging carriers and their requests that Alltel continue the service; and to (2) request a ruling by the Commission that Alltel’s termination of such service is unjust and unreasonable, in violation of Section 201 of the

¹ Central Vermont Communications, Inc.; NEP, LLC d/b/a Northeast Paging; Karl A. Rinker d/b/a Rinker’s Communications; A. V. Luttamus Communications, Inc.; Mobile Communication Service, Inc.; RAM Technologies, Inc.; Schuylkill Mobile Fone, Inc.; Telepage Communication Systems, Inc. and T&T Communications, Inc. d/b/a West Virginia Paging. The Commission may take official notice that the licenses of former coalition member Datapage, Inc. have been assigned to coalition member Karl A. Rinker d/b/a Rinker’s Communications.

Communications Act, 47 U.S.C. §201, and is otherwise unlawful, for the same reasons stated herein that also would have applied to Verizon's termination of its Type 3A service. As their fourth supplement to the Petition, the Paging Coalition and AAPC respectfully state:

Background

The Petition was filed on November 30, 2001, as a result of letters issued by Verizon to paging carriers in its service areas announcing that it would unilaterally terminate all "Type 3A" and comparable interconnection arrangements by November 2002, ostensibly due to the commencement of Local Number Portability ("LNP") obligations of wireless carriers.² Citing, among other important considerations, the onerous and costly disruption and hardship to themselves and their customers that would arise from such termination, the Paging Coalition requested in its Petition that the Commission find and declare that Verizon's termination of such arrangements would be "unjust" and "unreasonable" within the meaning of Section 201 of the Communications Act (the "Act"), 47 U.S.C. §201, and therefore unlawful.

In this regard, the Paging Coalition requested the Commission to specifically find and declare that such unilateral termination would violate both the letter and the spirit of Section 20.11 of the Commission's rules, 47 C.F.R. §20.11, requiring Verizon and other ILECs to provide the type of interconnection reasonably requested by paging carriers, as well as the letter and spirit of Section 51.315(b) of the Commission's rules, 47 C.F.R. §§20.11, 51.315(b), prohibiting Verizon and other ILECs from separating network elements currently combined and provided on an unbundled basis as part of Verizon's Type 3A offering.

² As explained in more detail in the Petition, Type 3A interconnection permits the public to page customers of the Coalition with a local (seven digit) call anywhere in a LATA served by a Coalition member. "RTB" provided by Alltel is the equivalent service in all material respects.

The Paging Coalition further argued that Verizon's offering of Type 3A, and other ILECs' offering of similar arrangements, is subject to the Commission's plenary interconnection jurisdiction under Sections 332(c)(1)(B) and 201(a) of the Act "to establish through routes . . . and to establish and provide . . . regulations for operating such through routes,"³ and that Verizon and other ILECs are obligated to provide such arrangements upon request of a paging carrier pursuant to Section 20.11 of the Commission's rules.⁴ The Paging Coalition also argued that the offering similarly falls squarely within the Commission's jurisdiction under Section 251(c)(2)(D) of the Act to determine whether the "rates, terms, and conditions" of Verizon's and other ILECs' interconnection with paging carriers are "just" and "reasonable".⁵

Verizon opposed the Petition on the theory that Type 3A and similar arrangements are merely a "billing service" which is beyond the Commission's interconnection jurisdiction,⁶ and that the Commission ostensibly has "squarely held" that "LECs are not obligated . . . to provide [Type 3A and similar] services at all".⁷ Nonetheless, Verizon stated that it was "exploring whether there are ways in which it might continue [Type 3A and similar] arrangements for paging carriers;"⁸ and it subsequently sent letters dated March 20, 2002, to some carriers stating that

³ Petition at pp. 7-8; Reply to Comments at pp. 9-11.

⁴ Petition at pp. 10-12. Section 20.11 of the rules was promulgated pursuant to the Commission's interconnection jurisdiction under Sections 332(c)(1)(B) and 201(a) of the Act. *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order)*, 9 FCC Rcd 1411, 1497-1498 (FCC 1994) (hereinafter *CMRS Second Report and Order*).

⁵ Reply to Comments at pp. 12-14.

⁶ Verizon Opposition at pp. 5-7. This contention was thoroughly refuted by the Coalition by letter herein dated March 28, 2002.

⁷ *Id.* at p. 7, citing *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (FCC 2000), *aff'd on other grounds sub nom. Qwest Corporation v. FCC*, 272 F. 3d 462 (DC Cir. 2001) (hereinafter "*TSR Wireless*"). This claim similarly was refuted at pp. 18-19 of the Petition and at pp. 14-16 of the Reply to Comments dated February 4, 2002.

⁸ *Id.* at p. 2.

“Verizon has decided to continue providing [Type 3A and similar arrangements] to paging carriers, on the same terms that the carriers are currently receiving”. Verizon’s letter contained the additional condition that a paging carrier may not “port any of its customers’ telephone numbers to another service provider”.

A specimen letter from Verizon containing these statements was attached to the Second Supplement filed under date of April 5, 2002, which also pointed out that the issues raised in the Petition were not moot as a result of Verizon’s second letter.⁹ Nonetheless, Verizon’s change in position, and decision to continue offering its Type 3A service to paging carriers, eliminated the immediate controversy that caused the Petition to be filed.¹⁰

Alltel’s Termination of “RTB”

Against this background, AAPC was informed in September 2003 that Alltel had advised an AAPC member, East Kentucky Network (EKN), that Alltel would be eliminating its “RTB” service on or about October 1, 2003. EKN learned this information from an email message from Alltel dated July 23, 2003, declining to add a new NXX code implemented by EKN to its existing RTB arrangements with Alltel.¹¹ Since that time, both in direct communications by EKN to Alltel, and in communications to Alltel by AAPC on behalf of its members, Alltel has been advised repeatedly of the severe hardship which termination of “RTB” would cause to the affected

⁹ Verizon filed a belated response to the Second Supplement under date of June 4, 2002, in which it argued that the Petition is moot as a result of Verizon’s March 20 letter. Verizon’s contention was, nonetheless, flatly belied by its continued insistence in the same document that Type 3A arrangements “are not interconnection arrangements at all” and that ‘LECs are not obligated . . . to provide such services at all.’” Response of Verizon, June 4, 2002, at 2 & n. 4.

¹⁰ The Third Supplement to the Petition was filed on June 20, 2002, and, in relevant part, advised the Commission that AAPC was joining in the proceeding as a co-petitioner.

¹¹ That same email message claimed that EKN was advised of Alltel’s intentions by certified letter dated April 30, 2003. However, EKN can find no evidence that any such letter was received by it, and Alltel has never provided proof of delivery. Unity Communications, Inc., another AAPC member with RTB arrangements through Alltel’s Ashland, KY, tandem office, likewise can find no evidence that any such notice was ever sent by Alltel.

paging carriers and their customers, and has been repeatedly requested to continue the service.

Alltel also was fully advised of the paging carriers' position that such unilateral termination would not be lawful, for the reasons set forth in the Petition and other pleadings of record in this proceeding.

Nonetheless, Alltel has been at best totally impervious and unresponsive to all concerns expressed by the paging industry, and to all requests to continue its "RTB" arrangements. In fact, Alltel misled AAPC concerning Alltel's intentions by advising undersigned counsel in a telephone conversation on October 10, 2003, that (a) Alltel had not yet terminated RTB for paging carriers and there was still time to try to work something out; that (b) Alltel would provide background information to AAPC on Alltel's decision to terminate "RTB," including copies of all notifications sent by Alltel to affected paging carriers; and that (c) Alltel would offer paging carriers alternate arrangements to help ameliorate the impact of terminating "RTB". In fact, however, Alltel has failed and refused to provide any of the promised information and, since that time, has refused any further communications with the affected paging carriers or AAPC. Nonetheless, Alltel has proceeded to terminate its "RTB" services to the affected AAPC members.

The Requested Declaratory Ruling Should Be Issued

Petitioners respectfully submit that record herein is ripe for a ruling on the fundamental issues raised by the Petition, and that Alltel's conduct in unilaterally terminating what it terms "RTB" service to paging carriers renders it appropriate for the Commission to issue the requested ruling at this time. Section 332(c)(1)(B) of the Act explicitly authorizes the Commission to "order a common carrier [*i.e.*, Alltel] to establish physical connections with [paging companies and other CMRS providers] *pursuant to Section 201 of this Act.*" (Emphasis added). In turn, under Section 201(a) the Commission *not only* has jurisdiction to order Alltel "to establish physical

connections with other carriers,” *i.e.*, paging companies and other CMRS providers, *but also* to order Alltel “to establish through routes . . . and to establish and provide . . . *regulations for operating such through routes*”. (Emphasis added). Further, Section 201(b) explicitly empowers the Commission to declare any Alltel “practice, classification, or regulation” concerning such through route to be “unjust or unreasonable” and, hence, “unlawful”.

The “through routes” in this case are the routes of calls from Alltel’s originating end-offices serving the calling parties to the premises of the paging carriers, where the calls are physically delivered for transmission over the paging networks.¹² Thus, by the express language of Section 201(a), the Commission is empowered to order Alltel to establish such “regulations for operating such through routes” as may be necessary to establish or maintain “RTB” service.¹³

Similarly, a “practice” or “regulation” which Alltel has established with respect to traffic interchanged between it and paging carriers in its service areas -- *viz.*, a “practice” or “regulation” Alltel established by terminating “RTB” service – has the effect of requiring all traffic over the “through route” to be handled *exclusively* as sent-paid telephone toll traffic of the calling party.¹⁴ Upon a finding by the Commission that Alltel’s “practice” or “regulation” in this regard is “unjust” or “unreasonable,” as the petitioners request, Section 201(b) explicitly declares such “practice” and “regulation” to be “unlawful.”

Stated another way, Alltel has conditioned the physical connection of its facilities upon connecting paging companies acceding to its demand that the interchanged traffic be treated *exclusively* as sent paid toll traffic of the calling party. Alltel thus has unilaterally established the

¹² See Figure 2 at p. 16 of the Petition.

¹³ Exhibit 1 to the Petition is an example of the “regulations” necessary to maintain “RTB” service which the Commission may order Alltel to establish pursuant to Section 201(a) of the Act.

¹⁴ By contrast, under Alltel’s former “RTB” service, paging carriers paid Alltel access-equivalent charges for the transport of the interchanged traffic from the end office serving the calling party to the Point of Interconnection with the paging company.

“practice” that only sent-paid toll calls may be transmitted on the “through route” between Alltel’s originating end offices and the point of interconnection with paging carriers. That “condition” or “practice” alone is sufficient by itself to invoke the Commission’s jurisdiction under Sections 332(c) and 201.¹⁵

Moreover, exactly the same conclusion is reached even under the new interconnection sections added by the Telecommunications Act of 1996. The Commission has defined the term “interconnection” for purposes of Section 251 as “the linking of two networks for the mutual exchange of traffic.”¹⁶ However, that definition by itself does not define either the scope of Alltel’s legal obligations concerning “interconnection” under Section 251, nor does it define the scope of the Commission’s jurisdiction concerning “interconnection” under Section 251. Instead, Section 251(c)(2) imposes upon Alltel, as an ILEC, not only the bare “duty to provide . . . interconnection,” but also the duty to “provide . . . interconnection . . . on *rates, terms, and conditions that are just [and] reasonable*”. (Emphasis added).

What Alltel has done by terminating its “RTB” service is to “condition” its physical linking of networks upon the paging carriers acceding to Alltel’s demand that all interchanged traffic be treated exclusively as sent-paid toll traffic of the originating caller. Alternatively, its actions can be described as unilaterally imposing as a necessary condition of the physical linking of networks the “term” that calls to pagers must be exchanged solely as sent-paid toll calls of the originating caller. Either way, Alltel’s actions in terminating “RTB” service are an inextricable component, *i.e.*, a material “term” and “condition” of its offer to paging carriers to “physical[ly] link[] networks”; and hence they fall squarely within the Commission’s supervisory jurisdiction

¹⁵ In this regard, Arch correctly argues at pp. 5-7 of its comments that the adverse effect on number utilization resulting from Alltel’s termination of “RTB” service by itself is sufficient for the Commission to find that Alltel’s “practice” of terminating, or failing to offer, “RTB” service is “unjust” and “unreasonable” within the meaning of Section 201 of the Act and, hence, is “unlawful”. The Commission of course has plenary jurisdiction over number utilization issues, especially in light of the powers conferred by Section 251(e) of the Act, 47 U.S.C. §251(e).

¹⁶ 47 C.F.R. §51.5.

to determine whether or not such “terms” and “conditions” of interconnection are “just” and “reasonable” within the meaning of Section 251(c)(2) of the Act.¹⁷

This conclusion is reinforced by the fact that interconnection agreements between CMRS carriers and ILECs historically have included “terms” and “conditions” establishing the principles by which end user calling parties are to be billed by the interconnecting carriers for the interchanged traffic.¹⁸ It is of course true that the particular rating and billing “terms” and “conditions” in Alltel’s “RTB” service necessarily are *different* than the particular “terms” and “conditions” in a Type 1 or Type 3B interconnection. But there can be no serious argument that *all* of those arrangements characteristically include *some form* of terms and conditions relating to the manner in which interchanged traffic will be rated and billed to the end users. Those “terms” and “conditions” are in all events explicitly required by Section 251(c)(2) of the Act, as well as by Section 201, to be “just” and “reasonable”.

Conclusion

Alltel’s unilateral termination of its “RTB” service is oppressive and costly to the paging carriers it serves, and ultimately renders their paging services more cumbersome and costly for the public to use. Such result is a gross perversion of the Commission’s LEC-CMRS interconnection policy and the pro-competitive policies embedded in the Telecommunications Act of 1996. Moreover, such unilateral termination by Alltel flagrantly conflicts with established Commission policy that paging carriers, like other CMRS providers, are entitled to have the type

¹⁷ Although the Commission’s interconnection jurisdiction under Section 251 of the Act also would support the relief requested, Petitioners have specifically invoked the Commission’s jurisdiction under Sections 332(c) and 201, as well as Sections 20.11 and 315(b) of the rules.

¹⁸ See, e.g., *Domestic Public Land Mobile Radio Service*, 63 FCC 2d 87, 99-100 (FCC 1977)(Section 6 of model Connection and Traffic Interchange Agreement entitled “Charges, Billing and Payments for Interchanged Calls”); *Memorandum of Understanding*, 80 FCC 2d 352, 366-367 (FCC 1980)(Section 6 of model Connection and Traffic Interchange Agreement entitled “Charges, Billing and Payments for Interchanged Calls”).

of interconnection they desire for their paging services; and that ILECs such as Alltel are obligated to provide interconnections sought by requesting carriers so long as such interconnections are technically feasible.

Further, Section 51.315(b) of the Commission's rules expressly forbids Alltel from separating network elements already provided on an unbundled basis, except by request. By unilaterally terminating "RTB" service over the protest of affected paging carriers, Alltel in fact forcibly and improperly separated its share transport network element from its local circuit switching network element, which Alltel previously combined and provided to paging carriers in its service areas as part of its "RTB" service.

For all of these reasons, the Commission should find and declare that Alltel's termination of its "RTB" service to paging carriers is unjust and unreasonable within the meaning of Section 201 of the Communications Act, 47 U.S.C. §201, and therefore unlawful; and that such unilateral termination additionally violates Section 20.11 and Section 51.315(b) of the Commission's rules, 47 C.F.R. §§20.11, 51.315(b).

Respectfully submitted,

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